Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
	)	
Petition of the Multifamily Broadband Council	)	
Seeking Preemption of Article 52 of the	)	MB Docket No. 17-91
San Francisco Police Code	)	

COMMENTS OF VICIDIEM, INC.

I. INTRODUCTION.

Vicidiem, Inc. ("Vicidiem") hereby submits its initial comments to the Federal Communications Commission ("FCC" or "Commission") in response to the April 4, 2017 Public Notice in the above-referenced proceeding. The Commission's Public Notice seeks input on a petition submitted by the Multifamily Broadband Council ("MBC"). MBC's petition seeks a declaratory ruling that Article 52 of the San Francisco Police Code is preempted because Article 52 conflicts with the Commission's regulatory frameworks governing competitive access to inside wiring in multi-tenant buildings, bulk billing arrangements, and forced network sharing obligations, and because federal law and policy have "occupied the field."

For the reasons described below, we encourage the Commission to grant MBC's petition.

II. BACKGROUND.

Vicidiem is a Utah corporation that was formed in 2012. We have developed certain technology that increases the efficiency of large scale networks. As part of that effort, we provide fiber-based gigabit Internet services, as well as other service (e.g. voice, automation, and video) to residential multi-tenant properties. Vicidiem provides these services to more than

10,000 apartment units of properties in several metropolitan markets throughout the Western United States.

Managed services are highly competitive. We complete with larger, well-funded entities that have much less incentive for innovation. Indeed, traditional ISPs, telecos, and cable providers have not changed the management of the bandwidth at the local area network in more than a decade.

Vicidiem does not currently provide service in San Francisco. Notwithstanding, we are submitting these comments on MBC's petitions based on Article 52's clear anticompetitive effect and the negative consequences that would follow if similar laws are adopted in other cities.[1]

III. ARTICLE 52 IMPOSES SEVERE CONSTRAINTS ON THE ABILITY OF COMPETITIVE PROVIDERS TO SERVE MULTI-TENANT BUILDINGS.

As MBC correctly states, Article 52 alters the competitive landscape in multi-tenant buildings. In many instances, the contractual arrangements between the owner and the service provider are preconditions to the financing required for buildouts in multi-tenant buildings. Unlike large, deep-pocketed corporations (e.g. Google, Comcast, Cox, CenturyLink) Vicidiem relies on third-party investors and lenders to finance its facilities at multi-tenant properties. Because smaller providers, like Vicidiem, cannot self-fund their operations, this financing is critical, as substantial capital is required to construct and launch a system in a multi-tenant property. Simply put, if Vicidiem were unable able to demonstrate a likelihood of success with regard to a particular project, its lenders would not fund the project.

Based on our experience, a key indicator of success is a valid, enforceable right of entry ("ROE") agreement with a property owner that grants our company undisturbed use of wiring

[1] It is also worth noting that Article 52 will significant infringe on the property rights of the various owners.

inside the building(s). An exclusive ROE during the initial term of the contract with the property is paramount to our business model as bulk billing is generally the only way to make the capital expenditure viable. Bulk billing also allows property owners to provide these services as amenities for all tenants at a steep discount. As the Commission has recognized, bulk billing arrangements allow companies like ours to offer reduced prices to customers by spreading fixed costs among many subscribers using common facilities. Indeed, we do not provide services any other way as the only way to offer such discounts is if we have the ability to serve all (or almost all) of the tenants on a given property.

If allowed to stand, Article 52 and other laws like it would eliminate these sorts of arrangements and make it extremely difficult for smaller competitive providers to obtain financing and compete against better-funded competitors who do not need outside financing. As a result, in many cases smaller competitive service providers like ours will not be able to secure funding to construct an on-site network, and thereby be forced to withdraw from (or not enter) markets with similar laws as Article 52. Given Article 52, Vicidiem will not launch properties in San Francisco if Article 52 stands.

Article 52's forcing of property owners to allow all comers access to a property's wiring, not only tramples the owner's and services provider's contractual rights for exclusive access to the property's wiring, the mandate reduces nearly all incentive for Vicidiem to invest in any upgrades to our existing networks. In other words, if placed in this situation, we would have no choice but to leave existing equipment and infrastructure in place as investment in upgrades would not yield a return sufficient to justify the capital expense.

Finally, the FCC's inside wiring rules have played a major role in facilitating competition for communications services in the areas we service. Vicidiem shares MBC's concerns that

Article 52 will penalize property owners who have taken advantage of the FCC's rules, dissuade other property owners from exercising their rights under the FCC's rules in the first place, and/or incentivize property owners to try to avoid Article 52 by ceding their ownership rights over inside wiring to incumbent providers.

IV. ARTICLE 52 EXACERBATES THE DIGITAL DIVIDE.

As MBC has noted, bulk-billing arrangements are typically used by property owners and service providers to provide affordable video and broadband services to shared-living environments like retirement and nursing homes, student housing, and lower- or fixed-income residents. We are finding this particularly true in the low-income housing projects where high-speed Internet would not be available without bulk billing. Bulk billing arrangements will cease to exist under Article 52. As a result, consumers who depend on such arrangements will likely receive services at higher prices and poor customer service.

V. ARTICLE 52 IMPAIRS THE ABILITY OF COMPETITIVE PROVIDERS TO MAINTAIN A HIGH LEVEL OF CUSTOMER SERVICE.

In our experience, a significant portion of service interruptions and related problems in multi-tenant properties are caused by issues relating to inside wiring. Because Article 52 does not address how multiple providers on the same property must behave towards each other, the ordinance will only make these problems worse. Specifically, the use of common wiring for two signals usually results in interference, which leads to service cutoffs and, eventually, loss of customers. The management of costs alone of having to juggle and account for multiple providers would preclude us from being able to provide services. Indeed, the likely outcome would be service providers would be constantly disconnecting one another's equipment with little regard to the affect it would have on the other parts of the network.

Moreover, Vicidiem often includes service level agreements ("SLAs") in our agreements with property owners. A typical SLA includes mandatory deadlines for repairing service interruptions and outages, completing installations, and enforceable standards to maintain minimum bandwidth to a property. SLAs are an effective way for us to set ourselves apart from large providers that do not offer service level guarantees. Indeed, in many instances we are guaranteeing bandwidth speeds in order to win the contract. Under Article 52, however, we cannot commit to a SLA because we do not have protected and undisturbed control over the wiring being used to deliver our services to customers.

VI. CONCLUSION.

For the reasons discussed above, the Commission should find that Article 52 is preempted by federal law and policy.

Respectfully submitted,

/s/ Paul A. Christensen
Name: Paul A. Christensen
Title: President

Vicidiem, Inc.
2735 Parleys Way, Suite 201
Salt Lake City, UT 84109
801-753-7374

Dated: May 17, 2017